

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary also believes that this emergency clearly poses such an immediate, serious harm that delaying action by providing five calendar days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3).

Description of Specific Facts Which Constitute the Emergency

A suspect adult male *Popillia japonica* (Japanese beetle) was recovered from a trap on July 16, 2008 (PDR #1388270), at a roadside location located in the Ontario area of San Bernardino County. A suspect adult male *Popillia japonica* (Japanese beetle) was recovered from a trap on July 17, 2008 (PDR #1388273), at a residence located in the Ontario area of San Bernardino County. On July 24, 2008, both of these suspect Japanese beetles were confirmed by Department entomologist. This is indicative of a possible incipient infestation existing in the Ontario area of San Bernardino County.

An adult male *Popillia japonica* (Japanese beetle) was recovered from a trap on July 16, 2008 (PDR #1388271), at a business located in the Riverside area of Riverside County. On July 24, 2008, this suspect Japanese beetle was confirmed by Department entomologist. This is indicative of a possible incipient infestation existing in the Riverside area of Riverside County.

An emergency eradication response is necessary now to ensure the Japanese beetle does not continue to multiply and/or spread to other uninfested areas of the State. Adult Japanese beetles may continue emergence and although a strong flyer, traveling up to five

miles to find suitable host material, will stay in a more local area when there is adequate host material. The real threat of long distance spread includes the human assisted movement of infested plants or soil.

Japanese beetle is one of the most destructive insect pests in the United States. The adult beetle is a gregarious and general feeder that causes serious damage to fruits, truck and garden crops, ornamental herbaceous garden plants, ornamental shrubs, trees and vines, and many other urban plants. The larvae feed extensively on the root systems of plants, particularly in grassy (sod/turf) areas such as parks, golf courses, etc.

The United States Department of Agriculture still considers this pest serious enough to maintain a Japanese Beetle Program to prevent the dissemination of adult beetles through the movement of airplanes and air cargo from infested states during the Japanese beetle flight season. Several states within the United States maintain quarantines in an effort to prevent the introduction of this serious pest through the movement of nursery stock or other carriers. The State of California has a Japanese Beetle Exterior Quarantine, Section 3280, Title 3, California Code of Regulations to help mitigate the introduction of this beetle into California. The last time the Department adopted a Japanese Beetle Interior Quarantine (Section 3420) was in 1983 and regulated the Orangevale area of Sacramento County. This regulation was subsequently repealed after the beetle was successfully eradicated.

The Japanese beetle has the capability of causing significant irreparable harm to California's agricultural industry and environment. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision

(c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, sections 15307 and 15308.

The Department has also determined that to ensure it conducts an eradication project with the greatest chances of success, eradication activities will need to begin as soon as possible. This authority includes, “The searching for all stages of the Japanese beetles by visual inspection, the use of traps, or any other means.” The Department is currently performing a detection survey which relies heavily upon the voluntary cooperation of property owners to have Japanese beetle traps placed upon their properties. The Department now needs to immediately establish it has the legal authority to conduct Japanese surveys without its having to just rely on property owners voluntarily granting access in order to complete the surveys.

The proposed amendment of Section 3589(a) would establish Riverside and San Bernardino counties as eradication areas for Japanese beetle. The entire counties are being proposed as eradication areas since future detection surveys may result in finds of additional small Japanese beetle infestations outside the current affected area. To enable rapid eradication responses to newly discovered small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area.

The effect of the amendment of this regulation will be to implement the State’s authority to perform specific survey, control and eradication activities against Japanese beetle in Riverside and San Bernardino counties. This authority includes, “The searching for all stages of the fly by visual inspection, the use of traps, or any other means.” It is immediately necessary to perform these activities within Riverside and San Bernardino counties. Any eradication or control actions undertaken by the Department will be in cooperation and coordination with federal, city, county, and other state agencies as

deemed necessary by the Department to ensure no long-term significant public health or environmental impacts. To prevent the spread of the Japanese beetle to non-infested areas in order to protect California's agricultural industry and environment, it is necessary to begin eradication activities against the Japanese beetle immediately. Therefore, it is necessary to amend this regulation as an emergency action.

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts, and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

Section 3589. Japanese Beetle Eradication Area.

The amendment of Section 3589 (a) will establish that Riverside and San Bernardino counties are additional eradication areas with respect to Japanese beetle. The effect of the amendment of this regulation is to provide authority for the State to perform eradication

activities against Japanese beetle within Riverside and San Bernardino counties.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that the proposed amendment of Section 3589 does not impose a mandate on local agencies or school districts and no reimbursement is required under Sections 17500-17630 of the Government Code.

Cost Estimate

The Department has also determined that the regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and no costs or savings in federal funding to the State.